BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 92-163-C - ORDER NO. 92-802

SEPTEMBER 28, 1992

IN RE:	Application of Certain South Carolina Local Exchange Companies (LECs) for Approval of an Expanded Area Calling Plan.	) ORDER DENYING EXPANDED AREA CALLING PLAN

I.

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition filed jointly by a majority of the South Carolina Local Exchange Companies (Petitioners or LECs) on March 13, 1992.[1] This Petition proposed an expanded area calling plan (EAC plan). As proposed by the Petitioners, the EAC plan can be summarized as a restructure of intraLATA toll rates. The planned restructure includes a customer

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1. The plan participants include: Alltel-South Carolina, Inc., Bell South Telecommunications, Inc., DBA Southern Bell Telephone & Telegraph, Chesnee Telephone Company, Inc., Chester Telephone Company, Contel of South Carolina, Inc. DBA GTE South Carolina, Farmers Telephone Cooperative, Inc., GTE South, Inc., Heath Springs Telephone Company, Home Telephone Company, Inc., Lockhart Telephone Company, McClellanville Telephone Company, Inc., Norway Telephone Company, Inc., Palmetto Rural Telephone Cooperative, Inc., Piedmont Rural Telephone Cooperative, Inc., Pond Branch Telephone Company, Inc., Ridge Telephone Company, Inc., Ridgeway Telephone Company, Inc., Sandhill Telephone Cooperative, Inc., St. Stephen Telephone Company, Inc., United Telephone Company of the Carolinas, and Williston Telephone Company, Inc.

line charge to each residential and business line, a reduction in intraLATA toll rates of 55%, allows for seven digit dialing and provide toll-free calling to certain county government offices.

The matter was duly noticed to the public by newspaper notification and by customer bill inserts by all the LECs participating in the plan. Thereafter, Petitions to Intervene were filed on behalf of MCI Telecommunications, Inc. (MCI), AT&T Communications (AT&T), the Division of Information Resource Management (DIRM), the South Carolina Department of Consumer Affairs (the Consumer Advocate), the South Carolina Public Communications Association (SCPCA), LDDS of Carolina, Inc. (LDDS), Lynn N. Hein, and Joey Davis.

II.

MOTION TO STAY PROCEEDING

By Order No. 92-539, issued July 10, 1992, the Commission dealt with a Notice of Motion and Motion filed on behalf of MCI. The Motion of MCI requested a Stay of the Commission's decision in the instant Docket pending the outcome of the intraLATA competition proceedings scheduled in Docket Nos. 92-182-C, 92-183-C, and 92-200-C. The Commission determined that it was premature to make a decision concerning the impact of the EAC plan on the intraLATA competition proceedings until the Commission had the opportunity to hear the evidence in the instant Docket. The Commission stayed its ruling on MCI's Motion until the hearing in the instant Docket was held and the evidence was presented. The Commission now has before it MCI's Motion since the Commission has now concluded the evidentiary portion of the EAC proceeding. The Commission, after hearing the evidence in the instant proceeding, is not of the opinion that a Stay is necessary pending the intraLATA competition Dockets. While the Commission noted in Order No. 92-313 that MCI's request for intraLATA competition and the LEC's EAC plan have the ability to directly affect one another, the Commission does not feel that it is necessary to hold its decision in the EAC proceeding in abeyance until the intraLATA competition hearing is held. Therefore, MCI's Motion to hold the Commission's decision in this matter in abeyance is denied.

III.

BACKGROUND ON EAC PROCEEDING

The matter was duly scheduled for hearing which commenced July 22, 1992, at 10:30 a.m., in the Commission's Hearing Room, the Honorable Henry G. Yonce, presiding. M. John Bowen, Jr., Esquire, represented the participating LECs; D. Christian Goodall, Esquire, and Martha P. McMillin, Esquire, represented MCI; Francis P. Mood, Esquire, and Roger A. Briney, Esquire, represented AT&T; Craig K. Davis, Esquire, represented DIRM; Elliott F. Elam, Jr., Esquire, represented the Consumer Advocate; John F. Beach, Esquire, represented SCPCA; Lynn Hein appeared pro se; and Marsha A. Ward, General Counsel, represented the Commission Staff. At the beginning of the proceeding, the Commission heard comments from interested parties. Those speaking in opposition of the EAC plan were: W. J. Allred, L. R. Edwards, Eugene Vasilew, Joseph Harbort, and Montye DuBose. The LECs participating in the proposed plan presented the testimony of M.E. Clement, Charles S. Parrott, James H. Clarke, III, and H. Keith Oliver. MCI presented the testimony of Don J. Wood. AT&T presented the testimony of Mike Geudel. Ted L. Lightle testified on behalf of DIRM. The SCPCA presented the testimony Gene R. Stewart in support of its position. The testimony and evidence considered by the Commission consists of four volumes of transcript and 19 hearing exhibits.

IV.

MOTION FOR DIRECTED VERDICT AND MOTION TO DISMISS

At the conclusion of the LEC's case, counsel for SCPCA made a Motion for a Directed Verdict. The grounds for the Motion are the same as those set forth in the SCPCA's Motion to Dismiss which was filed with the Commission and dated July 10, 1992. Specifically, the grounds for the Motion are as follows: 1) the SCPCA contends that the filing of the LECs in this matter is a rate case for each of the petitioning LECs and, therefore, is a violation of S.C. Code Ann. §58-9-570 (1976). According to §58-9-570, the Commission must consider certain information in a rate case proceeding and that the LECs participating in this Docket have not presented all of the evidence as required in that Code section. 2) S.C. Code Ann., §58-9-540(d) (Cum. Supp. 1991) requires that no further rate change request may be applied for within twelve (12) months after the date of a rate schedule has been filed by a telephone utility which affects the telephone utility's general body of subscribers. According to the SCPCA, there is evidence in the record to indicate that for a number of LEC subscribers in this plan, this matter is a rate increase and some of the LECs participating in this Docket have filed for rate relief within the last twelve (12) months and would be, therefore, ineligible for the "rate relief" petitioned for in this proceeding. 3) S.C. Code Ann., §58-9-520 (Cumm. Supp. 1991) requires that "whenever a telephone utility desires to put into operation a new rate or tariff which affects the telephone utility's general body of subscribers, the telephone utility shall give the Commission not less than thirty (30) days' notice of its intention to file and shall, after the expiration of the notice period, then file with the Commission a schedule setting forth the proposed changes...." According to the SCPCA, no thirty (30) day notice was filed by the petitioning LECs and, therefore, a verdict should be directed against the petitioning LECs based upon the failure to file the thirty (30) day notice as required by the Code.

MCI joined in the Motion of the SCPCA and added an additional ground to the Motion. According to MCI, if this matter is not a rate increase, then it is incumbent upon the Commission to determine if the plan is in the public interest. According to MCI, there is no evidence in this record to support a public interest showing and, therefore, the participating LECs have not met their burden of proving that the plan is in the public interest.

The Consumer Advocate joined in the Motions of the SCPCA and MCI. Additionally, DIRM added another basis for the Motion. According to DIRM, the Hamm v. Southern Bell decision of 1990 requires support by appropriate empirical studies. No empirical studies have been provided and, therefore, this matter lacks substantial evidence.

The Commission advised the parties that this Motion would be taken under advisement and ruled upon in the final Order.

In considering the Motion to Dismiss and the Motion for Directed Verdict, as well as the grounds enunciated by the parties participating in the proceeding and the arguments against the Motion put forth by the LECs participating in the EAC plan, the Commission has considered the following findings of fact:

<u>Public Interest</u>

A ground for dismissal raised by MCI was whether or not the proposed EAC plan was in the public interest. In that regard, the Commission makes the following findings of fact:

1. According to the Petition filed by the participating LECs, approval of the EAC plan would allow "the Petitioners to resolve numerous requests for Extended Area Service (EAS) that continue to be presented to the Commission and to the Petitioners." According to the Petition, the "continual requests by individuals, businesses, and communities appear to be either prompted by economics, social, or governmental ties." The Petitioners assert that the plan is an appropriate way to resolve those concerns and was submitted for approval by the Commission.

2. EAS service is a point to point connection between telephone exchanges which began as a long distance or toll route for which subscribers pay for service on a usage basis, but has been converted to EAS. The traditional EAS service is flat rated

and route specific, i.e., so much is added to each subscriber's monthly bill in order to allow subscribers in that exchange to call subscribers in another telephone exchange without having to pay toll or long distance charges. EAS raises rates to all customers in that exchange. The proposed EAC plan does not dictate set rates for specific calling patterns for certain customers, but instead allows all customers within the LATA the ability to call anywhere within the LATA for substantially reduced rates, plus the set customer line charge.

3. AT&T's witness Guedel asserted that the EAC plan does not address EAS pressures caused by the need for communications that cross LATA boundaries. Additionally, testimony in the record supports that whether or not the Commission adopted the proposed plan, pressures for EAS would continue to exist.

4. According to the description of the EAC plan, included as Attachment II to the Petition, the EAC plan will be a part of each participating LEC's tariff and will be mandatory for all customers of the participating LECs in this LATA-wide plan; seven-digit dialing will be required where feasible (pay stations and COCOT stations will remain on 1+ dialing until feasible to convert to seven digits); where technically and legally feasible, each subscriber will have toll-free calling to those county seat government offices located in the county seat; and the intraLATA toll rates in effect on December 31, 1991, will be reduced by 55% and the current mileage bands will be condensed into three (3) bands. The plan also calls for a mandatory monthly per-line charge

to all subscribers of the participating LECs as follows: residential ratepayers will pay a monthly per-line charge of $1.95, business subscribers (non-trunking) would pay a monthly per-line charge of $4.50, business (trunking) would pay an additional monthly per-line of $7.00, Centrex (Network Access Register (NAR) or trunk equivalent) would pay a monthly per-NAR charge of $7.00, and semi-public and COCOT paystations would pay a monthly per-line charge of $4.50. The plan proposes that upon approval, a long-term support mechanism will be established and administered by the Petitioners to ensure affordable local exchange rates do not jeopardize the universal service objective in the State. The monthly per-line charge will be included under local service rates when feasible. The plan is not revenue neutral, and in fact, the plan estimates a net reduction in revenues to the petitioners of about 7.4 million dollars.

5. Witness Clement, on behalf of the participating LECs, stated that a residential customer using the present calling characteristics would have to make over $3.55 worth of intraLATA toll calls to receive a benefit under the proposed plan. A business single line subscriber would have to make $8.18 worth of intraLATA toll calls to receive a benefit, and a multi-line business customer would have to make $12.73 in intraLATA toll calls to realize a savings under the proposed plan.

6. When asked why the participating LECs did not conduct a study to determine how many customers would benefit from the plan, Mr. Clement testified that the companies anticipated that new

calling habits would be formed with the plan. Additionally, stimulation was anticipated because of the 55% discount on intraLATA toll calls.

7. According to witness Clement, the Company did not conduct a study to determine the number of customers benefiting from the proposed plan. According to Mr. Clement, while this could have been done at substantial cost and substantial man-hours, it would have been difficult to do. The breakeven points were determined using old toll rates and it was Mr. Clement's testimony that, hopefully, stimulation and toll would occur causing people's calling patterns to change. Additionally, the current subscribers to saver service would receive a benefit that would be different than a normal subscriber. Additionally, those calling county governments may receive different benefits under the plan. Therefore, the LECs did not conduct a quantifiable study to determine the benefit that a customer would experience under the plan or to determine how many customers would benefit under the plan.

8. Hearing Exhibit No. 8 sets forth the residential intraLATA toll usage for a sample month in 1991. The exhibit depicts the participating LECs, their total lines, the number of lines making intraLATA calls and the resulting percentage. While the total percentage of residential subscribers making intraLATA calls during a given month is 55%, it does not depict whether the subscribers would benefit under the proposal of the participating LECs. The 55% could be one call in a given month which may not

produce a benefit for that subscriber. Conversely, it could be several calls which would result in a benefit to that subscriber, but there is no way for the Commission to discern this from the exhibit or any other exhibit supplied by the participating LECs.

9. The Commission is concerned over the impact of the additional monthly customer line charge to a subscriber's monthly bill. Based on the evidence in the record, the average rate for Farmers Telephone is $12.50 a month. An additional monthly customer line charge of a $1.95 would be a 15.6% increase to a Farmers' subscriber. The increase to a Home Telephone customer's monthly rate would be 22.2%, and the increase to the average monthly rate of a Southern Bell subscriber would be 12.2%. With no demonstration of the benefits of toll savings, these percentage increases could negatively impact the Commission's policy to promote universal service in South Carolina.

10. Mr. Allred, speaking on behalf of the American Association of Retired Persons (AARP) stated that the South Caroina AARP State Legislative Committee could not support the EAC because it is mandatory; it raises the price of service to consumers; it causes low volume toll users to subsidize high volume toll users; it may negatively impact universal service. Comments from the other Protestants were similarly in opposition to the EAC plan.

11. The proposed EAC plan includes a provision for seven-digit dialing for all intraLATA calls. Testimony of the proceeding indicates that there could be some customer confusion by the use of such a dialing pattern. Because there would be no way to indicate

to a customer that the seven-digit number that the customer was dialing was a toll call, a subscriber may not realize that he is in fact making a toll call and incurring long distance charges. According to the testimony of the participating LECs, a customer could look up the information in the telephone directory to determine if the the call is intraLATA long distance before placing it. Also, a customer could dial 1+ to find out if such a dialing arrangement was necessary to make the call and then the operator would advise the customer that the dialing of 1+ would not be necessary for that call.

Based upon the above findings of the Commission, the Commission hereby concludes:

1. That the implementation of the EAC plan will not resolve the EAS pressures experienced by the local exchange companies. InterLATA EAS requests could still be made, thereby thwarting the purpose of the EAC filing.

2. The support presented on behalf of the LECs for the EAC plan is wanting in the Commission's opinion. No witness testifying on behalf of the EAC plan could demonstrate to the Commission how many subscribers of the participating LECs would receive a benefit under the proposed plan. Neither could the participating LECs demonstrate who would not receive a benefit under the plan. The participating LECs are asking the Commission to approve an extended area calling plan in which the Commission has no indication from the proponents of the plan as to the impact, either positive or negative, on the subscribers who would be required on a mandatory

basis to participate in the plan. Without such a showing, the Commission feels that the mandatory customer line charge is an inappropriate addition to the subscribers' monthly telephone bill.

3. The Commission is of the opinion and so concludes that the seven-digit dialing arrangement for the plan could lead to substantial customer confusion. The customer is required to know that a call is intraLATA in nature or know and have the availability of a telephone book to look up the information. The Commission is of the opinion that this puts an undue burden on the subscriber and there was no indication from the participating LECs that an effort would be made to educate customers in this matter.

4. Therefore, based on the above conclusions, the Commission has determined that the extended area calling plan is not in the public interest.

STATUTORY PREREQUISITES

Based upon the Commission's determination that the proposed EAC plan is not in the public interest, the Commission need not address whether or not the filing is a "rate case" under S.C. Code Ann. §§58-9-520, 540 or 570 (1976), as amended.

NECESSITY OF EMPIRICAL STUDIES

DIRM added an additional ground to the Motion to Dismiss based on an alleged lack of substantial evidence pursuant to Hamm v. Southern Bell Telephone & Telegraph Company, 203 S.C. 132, 349 S.E.2d 311 (1990). Based on the Commission's determination, as to the public interest issue, the issue as to whether or not substantial evidence in the record supports the adoption of the plan is moot.

V.

MISCELLANEOUS

During the proceeding, counsel for the participating LECs stipulated that the participating LECs would support a future generic proceeding to address the impact of the proposed EAC plan on the poor and disadvantaged. Based upon the Commission's action herein, there is no need at this time to start such a generic proceeding.

IT IS THEREFORE ORDERED:

1. That the Motion to Stay Proceeding filed on behalf of MCI is hereby denied.

2. That the Motion for Directed Verdict and Motion to Dismiss on behalf of the SCPCA based upon the statutory grounds alleged therein are hereby denied.

3. That the Motion of MCI to dismiss the filing on the basis that it is not in the public interest is hereby granted.

4. That the ground for denial for the lack of subtantial evidence is hereby deemed moot.

5. That the expanded area calling plan filed on behalf of the participating LECs in South Carolina is not in the public interest, and is hereby denied.

6. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)